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In the Supreme Court of the United States

OCTOBER TERM 1971

No. 71-5331

DOROTHY BRYANT, et al.,
Petitioners,

vs.

ROBERT B. CARLESON, Director Department of Social Welfare State of California,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief for Respondent in Opposition

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit and the concurring opinion are not yet reported (Appendix A of Petition). The Amended Partial Summary Judgment of the District Court dated November 17, 1970 from which the appeal was taken to the Court of Appeals is unreported (Appendix D of Petition).

JURISDICTION

The jurisdiction of this Court has been adequately presented by petitioners.

QUESTIONS PRESENTED

The certified question presented to the Court of Appeals was whether in order to achieve compliance with section 402(a)(23) of the Social Security Act (42 U.S.C. 602(a)(23)) and to preclude the withholding of federal funds the District Court on November 17, 1970 correctly ordered an immediate increase in dollar maximums by 21.4% and readjustment of AFDC grants by said amount retroactive to October 1, 1970, enjoining respondent herein, pending further order of the Court, from adopting and enforcing regulations which reduce or otherwise affect the increased dollar maximums and grants by a ratable reduction based on the standard of need applied retroactively from the date of promulgation.[1]

The question before this court is whether the Court of Appeals was in error in vacating the district court's order for an immediate increase retroactive to October 1, 1970 of the maximum grants *pending* compliance with section 402(a)(23) of the Social Security Act and remanding to that court for further proceedings to consider: (1) the strain on the budget of the State of California (2) prejudice to the members of the class due to a straightened budget (3) to give the California Legislature an opportunity to respond

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1. Subsequently and prior to the Court of Appeals decision the California Supreme Court held that respondent did not have the authority to impose a percentage reduction without state legislative approval nor did he have authority to exceed his budget by paying increased maximums absent approval of other state officials. *California Welfare Rights Organization v. Carleson*, 4 Cal. 3d 445, 482 Pac. 2d 67, 93 Cal. Rptr. 758 (1971).

to the inducements Congress provided to abolish the maximum grant system or to continue it since it is now clear that respondent alone cannot make that decision.[2]

STATUTES AND REGULATIONS INVOLVED

42 U.S.C. section 602(a)(23) (section 402(a)(23) of the Social Security Act), California Welfare and Institutions Code section 11450(a) and 45 CFR section 233.20(a)(2)(ii) are set forth in relevant part on pages 2 and 3 of the Petition.

STATEMENT OF THE CASE

The State of California participates in the Federal government's Aid to Families with Dependent Children ("AFDC") program, (Cal. Welf. & Inst. Code §§ 11200-488) which was established by the Social Security Act of 1935 (49 Stat. 620, as amended, 42 U.S.C. §§ 301-1394.) Section 402(a)(23) of the Social Security Act requires that each of the various states which participates in the AFDC program must have a State Plan which must "provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." 42 U.S.C. § 602(a)(23).

A. Proceedings in the Federal Courts.

This suit was filed on August 6, 1969, by petitioners, AFDC recipients, as a class action for injunctive and

2. The District Court's Order following remand approving defendant's compliance program; order denying retroactive relief and satisfaction of partial summary judgment, as amended, is attached as Appendix A.

declaratory relief. Petitioners' prayer for relief, was *inter alia,* that the court "issue a preliminary and permanent injunction restraining Defendant Montgomery [the then Director of the State Department of Social Welfare] . . . [f]rom failing to increase the standards of need and maximum grants to reflect fully the changes in the cost of living retroactive to date such increases were required by § 402 (a)(23) of the Social Security Act."[3]

In addition the maximum grant statute was alleged to violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

A three-judge court was convened on September 12, 1969. By stipulation of counsel at the request of the presiding judge the first two causes of action involving compliance with the Social Security Act were to be heard by the Honorable Alfonso J. Zirpoli, United States District Judge. It was considered that his decision might be dispositive of the case and would be in the interest of judicial economy. On January 7, 1970 the Court denied respondent's Motion to dismiss. Respondent's Answer was filed May 6, 1970.[4]

Petitioners on July 17, 1970 filed a Motion for Partial Summary Judgment, which was heard on September 10, 1970. Petitioners requested *inter alia* the entry by the court of:

> "2. An order directing defendant to adjust standards of need dollar maximums effective July 1, 1969 in compliance with 42 U.S.C. § 602(a)(23) and further

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3. Not until October 17, 1969 did H.E.W. issue the Criteria for adjusting the standard of need 45 C.F.R. (233.20(a)(2)(ii)

4. This delay was the result of Petitioners' uncertainty regarding the effect of this court's decision holding valid Maryland's maximum grants in *Dandridge v. Williams,* 397 U.S. (1970) and the court's reversal and remand of *Kaiser v. Montgomery* re California's maximum grant statute, Welf. & Inst. Code § 11450(a).

directing defendant to give notice to all members of plaintiff's class of their entitlement to illegally withheld benefits."

* * *

"4. Pending compliance with § 402(a)(23), an order directing the defendant to immediately increase the dollar maximums by at least thirty (30) percent to avoid further irreparable injury to plaintiffs."

Respondent's Opposition to Motion for Partial Summary Judgment and Preliminary Injunction was filed August 28, 1970. The motion was heard and the Partial Summary Judgment entered on September 11, 1970. (Pet. Appendix B)

It was respondent's understanding that the Partial Summary Judgment ordered only prospective compliance with section 402(a)(23) of the Social Security Act. In accordance with this assumption proposed regulations providing for a 21.4% increase in the maximum grants with payments at a fixed percentage of the standard of need (ratable reduction) were submitted to the court on October 29, 1970 captioned "Compliance with Partial Summary Judgment of September 11, 1970". This assumption was based on the court's Memorandum Decision (Pet. Appendix C) which states "nor does the court purport to tell the State of California how much it shall pay. The court merely holds that if the State of California participates in such program it must comply with federal law."

A hearing was held before the single judge on October 29, 1970 which resulted in the Amended Partial Summary Judgment which was entered on November 17, 1970.[5]

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5. The District Court requested the views of the United States Department of Health, Education and Welfare. An amicus curiae brief was filed on October 29, 1970, a supplemental brief was filed on November 6, 1970 and an addendum on December 18, 1970 advising the court that California's regulations were acceptable.

Respondent was ordered to immediately increase the maximum grants by 21.4% and AFDC grants be increased by said amount retroactive to October 1, 1970 *pending* compliance with section 402(a)(23). Respondent was enjoined from adopting or enforcing regulations which would reduce or otherwise affect the ordered increases in dollar maximums and aid grants by a ratable reduction applied retroactively from the date of promulgation.

The court ordered the withholding of all federal funds under Title IV of the Social Security Act in the event of non-compliance and reserved the right to order such increases retroactive to July 1, 1969.

In the same judgment dated November 17, 1970, the District Court stated that it did not purport to decide the question of the authority of respondent to affect *future* AFDC grants by *prospective* ratable reductions in the need standards used for computing the grants, noting that the District Court "considers this question to be an issue to be appropriately adjudicated by a state rather than a federal court." This judgment contained the certified question permitting appeal to the Court of Appeals.

On November 19, 1970 respondent adopted as emergency regulations EAS §§ 44-212 (the increased standards of need), 44-313 (increasing the statutorily set maximums in Welfare and Institutions Code section 11450(a) by 21.4%), and 44-315 (the prospective ratable reduction) These were filed with the District Court for approval on November 24, 1970.

On or about November 19, 1970, a class action for injunctive and declaratory relief and for a writ of mandate was

commenced in the Superior Court for the County of Sacramento, entitled *California Welfare Rights Organization, et al., v. Martin, etc.,* Civil No. 207231. Plaintiffs, including petitioners, sought to permanently enjoin respondent herein from implementing or enforcing any or all of the three regulations referred to in the preceding paragraph and to mandate appellant to pay the full standard of need on the ground that the District Court had invalidated the legislatively set maximums and that appellant had no authority to increase or decrease those maximums.[6]

The respondent, Director of the State Department of Social Welfare, on November 23, 1970, filed in the Court of Appeals a timely Petition for Permission to Appeal under 28 U.S.C. 1292(b) together with an application for a stay. Permission to appeal and a stay were granted on December 18, 1970. On May 27, 1971 the Court of Appeals issued its order reversing and remanding the District Court's Partial Summary Judgment, as amended. In that order the Court of Appeals suggested that the District Court should take a more deliberate approach. The District Court was advised to consider: (1) the strain on the budget of the State of California (2) prejudice to the members of the class due to a straightened budged (3) to give the California Legislature an opportunity to respond to the inducements Congress provided to abolish the maximum grant system or to continue it since it is now clear that respondent alone cannot make that decision. California

6. This contention, at variance with petitioners' position before the federal court, was rejected by the California Supreme Court. *California Welfare Rights Org. v. Carleson,* 4 Cal. 3rd 445 (1971).

was given until July 1, 1971 to present complying regulations.

California filed with the District Court regulations increasing the maximum grants by 21.4% which were put into effect June 1, 1971. The District Court on August 10, 1971, found California in full compliance with section 402 (a)(23) of the Social Security Act and denied petitioners' request for retroactive relief to July 1, 1969.[7]

B. State Court Proceedings.

Proceedings were brought in the California State Courts which were resolved on March 25, 1971 by the California Supreme Court.[8] That court held that the Director of the State Department of Social Welfare under state law was authorized to comply with the Social Security Act increasing the legislatively set maximum grants by 21.4%. The court also held the Director could not without legislative authority institute a ratable reduction in welfare payments based on a percentage of the standard of need although this method of payment would be acceptable to HEW and bring California into conformity. The California court, recognizing respondent's fiscal dilemma, stated "[I]n the premises we deem it appropriate to refer the Director of the Department of Social Welfare to the Legislature for relief." 4 Cal.3rd at 459.

C. Department of Health, Education and Welfare Conformity Proceedings.

The Secretary of the Department of Health, Education and Welfare pursuant to 42 U.S.C. § 1316, on or about July

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7. Appendix page 2.

8. *California Welfare Rights Org. v. Carleson*, 4 Cal. 3rd 445 (1971).

8, 1970, notified the Director of the California State Department of Social Welfare that the question of California's compliance with the requirements of section 402(a)(23) of the Social Security Act would be heard by a hearing officer at an administrative hearing. The hearing was held on August 25 and 26, 1970 in San Francisco. The final decision by the Department was issued on January 8, 1971 by John D. Twiname, Administrator of Social and Rehabilitative Services of the Department of Health, Education and Welfare. In this decision, the State of California was found to be out of conformity with section 402(a)(23) of the Social Security Act. This decision also ordered the withholding as of April 1, 1971, of all federal contributions to the State of California for the operation of the AFDC program in this state.

By order also dated January 8, 1971, Mr. Twiname withdrew the earlier decision which ordered the cessation of federal contributions to the California AFDC program. The withdrawal order was based on the pending resolution of state law by the California Supreme Court.

Respondent herein submitted to HEW regulation EAS 42-313 raising the maximum grants by 21.4% as of June 1, 1971. Mr. Twiname found California in compliance with section 402(a)(23) and withdrew this issue.

REASONS FOR DENYING THE WRIT

The principal issue presented by petitioners is whether the District Court's remedies in enforcing compliance with section 402(a)(23) of the Social Security Act is limited to an order terminating federal funds (Petition 9:5-12). This issue has been mooted by the District Court's order of August 10, 1971 on remand. The District Court made clear that although the Court of Appeals decision cast serious

doubt on the jurisdiction and power of the court to order retroactive payments that if it did have such power relief would be denied on equitable grounds.

A. The Decision of the Court of Appeals Reversing the District Court's Interim Relief Order Pending State Compliance with the Social Security Act Is in Accord with the Decision of this Court in Rosado v. Wyman.

In *Rosado v. Wyman,* 397 U.S. 397 (1970) this court ordered prospective compliance with section 402(a)(23) by New York within a reasonable period of time for it to submit to the District Court a conforming plan.

This court remanded with the following precise instructions:

> "We remand the case to the District Court to fix a date which will afford New York an opportunity to revise its program in accordance with the requirements of § 402 if it wishes to do so. The District Court shall retain jurisdiction to review . . . any revised program adopted by the State, or, should New York choose not to submit a revamped program by the determined date, issue its order restraining the further use of federal monies pursuant to the present statute." 397 U.S. at 421-422.

On remand of *Rosado v. Wyman* by this Court to the District Court, District Judge Weinstein in a Memorandum and Order dated October 29, 1970, in giving prospective effect only to his order, had no doubt as to this Court's meaning and intent. 322 F. Supp. 1173 (E.D. N.Y. 1970)

"Plaintiffs seek to invoke the equity powers of this Court to grant plaintiffs and other members of their class the amounts they would have received, over and above what they actually did receive, if the State's AFDC payment schedules had been in compliance with section 402 since

July 1, 1969. Under the mandate of the Supreme Court, this Court lacks power to grant such relief. The mandate is quite clear: either approve the State's program or restrain the further use of federal monies in the State's AFDC program. It stated explicitly that:

> 'The District Court shall retain jurisdiction to review . . . any revised program adopted by the State, or, should New York choose not to submit a revamped program by the determined date, issue its order restraining the further use of federal monies pursuant to the present statute.' *Rosado v. Wyman,* 397 U.S. 397, 421-22, 90 Sup. Ct. 1207, 1222 (1970).

"This is no idle dictum. As the differences within both the Second Circuit panel and the Supreme Court made clear, a primary issue in the litigation was whether the courts should abstain completely and, if not, how deeply they should become engaged in a state-federal welfare issues. Concern over the strong implications for federalism implicit in congressional decisions to encourage state administered AFDC programs undoubtedly motivated the Supreme Court to emphasize that the State was to be given a choice.

"Supporting this conclusion is the fact that the Supreme Court afforded the State time to revise its program before the district court was empowered to consider a restraint on the further use of federal money in the State AFDC program. *Rosado v. Wyman,* 397 U.S. 397, 421-22, 90 Sup. Ct. 1207, 1222 (1970). If a remedy for underpayments had, in a sense, vested, this limitation on the district court's power would have been inappropriate." *Rosado v. Wyman,* 322 F.S. at 1195, 1196.

Petitioners' attempt to distinguish this court's decision in *Rosado* from California's situation is based on three un-

tenable grounds: (1) the necessity to solve New York's attendant factual problems in determining special needs (2) New York made a good faith attempt to comply with section 402(a)(23) prior to July 1, 1969 and (3) the court could enjoin enforcement of the California maximum grants statute and presumably direct payment of full need whereas in *Rosado* there was no severable provision in the New York regulations.

Respondent submits that California comes before this court with cleaner hands than New York did in *Rosado* and with a far more complex legal situation. There has been no blatant defiance of federal law.

1. California Did Not Know Whether It Had a Maximum Grant Table Subject to the Increases Required by the Social Security Act.

In *Kaiser v. Montgomery,* 319 Fed. Supp. 329 (N.D. Cal. 1969), vacated and remanded 397 U.S. 595 (1970), plaintiffs and their class challenged the constitutionality of California's maximum grant statute (Welf. & Inst. Code § 11450(a)). This action was filed on July 16, 1968. The three-judge District Court on August 28, 1969 held that California's maximum grant statute was unconstitutional in that it violated equal protection of the laws. The Court stayed its order pending appeal to the United States Supreme Court. Until the Supreme Court's decision in *Dandridge v. Williams,* 397 U.S. 471 (April 10, 1970) every lower court that had considered maximum grants had held them unconstitutional. See *Kaiser v. Montgomery,* 319 F. Supp. at 333. California obviously did not know whether it still had maximum grants that needed to be raised to comply with section 402(a)(23). Following remand by this Court respondent herein filed a motion to dismiss the *Kaiser* case. This motion was opposed by plaintiffs who still maintained

that there was no rational basis for the California statute. Not until June 10, 1971, pursuant to plaintiffs' agreement to dismiss that case was a stipulated dismissal filed.

California's knowledge of its obligation under section 402(a)(23), despite the affidavit of the former Chief, Income Maintenance Division, State Department of Social Welfare, an expert in fields other than law,[9] was beclouded by the District Court's *Kaiser* decision, and the plaintiffs' therein vigorous opposal to dismissal.

2. New York's Alleged "Good Faith" Attempt to Comply.

New York's "good faith" attempt to comply with section 402(a)(23) resulted in savings of almost forty million dollars. *Rosado v. Wyman,* 397 U.S. at 416. This Court stated "We reach our conclusions without relying on the finding made by the court below that in § 131-a New York was *attempting* to constrict its welfare payments. Speculation as to legislative and executive motive is to be shunned." (Emphasis the Court's) 397 U.S. at 419. California's failure to comply did not result in any savings whatever. California's proposed conforming regulations did not entail spending any less money but would have equitably apportioned the sums appropriated by the legislature for the AFDC program between the "haves" (recipients with outside income) and the "have nots". Respondents' authority to meet the need standard thereby was rejected by the Calif. Sup. Ct.

The California Supreme Court in *CWRO v. Carleson,* 4 Cal. 3rd 445 (1971) rejected petitioners' contention that the District Court's Partial Summary Judgment invalidated maximum grants thus requiring full need to be met. That

9. Petition 4:10-23.

court held that respondent Carleson had the authority, by regulation, to increase the dollar maximums but he had no authority to impose a ratable reduction without state legislative authority. Further the court held respondent had no authority to exceed his budget. Recognizing respondent's dilemma the court stated,

> "[In] the premises we deem it appropriate to refer the Director of the Department of Social Welfare to the Legislature for relief." (4 Cal. 3rd at 459).

B. The Decision Below, in Accord with Rosado, Does Not Conflict with Other Decisions of this Court or Other Courts of Appeal.

In each of the welfare cases relied upon by petitioners in support of the award of retroactive benefits the injury caused by the non-conforming statute or regulation was ascertainable. In *Wyman v. Rothstein,* 398 U.S. 275 (1970) the court reviewed and affirmed the issuance of a preliminary injunction by a three-judge court *(Rothstein v. Wyman,* 303 F.Supp. 339, (S.D.N.Y. 1969)) on the grounds that the differential between allowance levels established for welfare recipients in New York City and those in surrounding counties was unsupported by any evidence of a cost differential and hence violated the federal requirement for a statewide uniform standard. To the same effect *Boddie v. Wyman,* 434 Fed. 2d 1207 (2d Cir. 1970). In *Solman v. Shapiro,* 300 F. Supp. 409 (D. Conn. 1969) aff'm'd. 90 S. Ct. 25, (retroactive payments of amounts wrongfuliy withheld pursuant to invalid step-parent regulation), *Doe v. Shapiro,* 302 F. Supp. 761 (D. Conn. 1969) (retroactive benefits awarded because of termination for refusal to name the father of the child) and *Grubb v. Sterrett,* 315 F. Supp. 990 (N.D. Ind. 1970) (invalid stepfather regulations as in

Solman v. Shapiro) the plaintiffs were referred to the welfare department to permit that department on a case by case basis to determine the amount of benefits wrongfully withheld. A similar procedure was followed after the decision in *Lewis v. Martin,* 397 U.S. 552 (1970) which invalidated California's stepfather statute.[10] These cases concerned a small number of the AFDC caseload with a relatively small fiscal impact and with ascertainable entitlement to retroactive benefits.[11] None of these factors are present in the instant proceeding. See *Adens v. Sailor,* 312 F. Supp. 923, 927 (E.D. Pa. 1970) wherein the State was given sixty days within which to comply.

C. The Court of Appeals Correctly Required the District Court to Act as a Court of Equity Should and Weigh the Consequences of Granting Retroactive Relief.

The Court of Appeals by directing the District Court to consider the strain on the budget of the State of California and prejudice to the members of the petitioner's class due to a straightened budget, in granting relief, ordered that court to re-assess its finding that petitioners herein were suffering irreparable injury attributable to respondent's failure to fully implement section 402(a) (23). The Court of Appeals was cognizant of the rejection by Congress of the administration's proposal that the state must meet in full its standard of need. *Rosado v. Wyman,* 397 U.S. at 410. Section 402 (a)(23) only requires the maximums to be increased to reflect the rise in the cost of living since the maximums were

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10. In *Lewis v. Martin,* 397 U.S. 552, 560 (1970), on remand, the three-judge court ordered retroactive benefits from the date of this court's order *not* from the date of HEW's adoption of the regulation. See Petition page 11 fn.

11. *Sullivan v. Little Hunting Park, Inc.,* 396 U.S. 224 (1970) was concerned with a violation of civil rights, a discriminatory practice based on color. No First Amendment rights are involved in the case at bench.

last adopted. There was no requirement that the maximums, when last adopted, should meet the state set standard of need. (*Dandridge v. Williams*, 379 U.S. 471 (1970)). There was no requirement that the prior state established standard of need accurately reflect the cost of living at that time. Consequently if, prior to July 1, 1969, a state's standard of need did not in fact meet subsistence costs, adjusting the standard to reflect fully changes in living costs since the standard was established would still result in a standard of need less than the actual cost of living. Regrettable, as the State Legislature's failure to adjust upward welfare grants in the face of the alleged malnutrition among welfare recipients, section 402(a)(23) does not purport to remedy this inequity.

The District Court following remand by the Court of Appeals held that regardless of any constrictions placed by that court on its authority to order retroactive payments and assuming that the court has such powers "*it must act as a court of equity* and is therefore required to balance the state's prior unlawful action with a desperate fiscal and budgetary realities faced by the state in the administration of its welfare program as set forth in the affidavit of Charles Hobbs, Chief Deputy Director of the State Department of Social Welfare." (emphasis added)

"It must also take into consideration the interests of welfare recipients who have been denied monies to which they are entitled.

"Finally, it must consider the effect of retroactive payment on present and future welfare recipients. Retroactive payment would cost the state something in the area of an additional $90 million dollars.

"While the court recognizes the plight of welfare recipients, including the gross disparity between their actual needs and the amounts paid to them, it cannot in good con-

science conclude that their interests are best served ordering this expenditure.

"The fiscal crisis this would cause in the State of California would likely result in welfare cutbacks beyond the imagination of the parties here or the court.

"While the state has no one to blame but itself for being thrust on the brink of bankruptcy in the administration of its welfare program, this court will not push it over the edge."

In the face of the District Court's holding, reversal of the Court of Appeals' decision by this court would lead to no further benefits to the petitioners herein.

Petitioners' counsel has advised the District Court Judge that he will dismiss the remaining causes of action and obtain a final, appealable judgment on the first and second causes of action. Petitioners have indicated that they will appeal that judgment and will ultimately seek review by this Court. Under these circumstances the issues presented herein by petitioners may, if this court deems of sufficient importance, be then reviewed.

CONCLUSION

The petition, if not held totally lacking in merit, is clearly premature and should be denied.

Dated: October 12, 1971

Respectfully submitted,

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(Appendix Follows)

Appendix

Original Filed Aug. 10, 1971
Clerk, U.S. Dist. Court San Francisco

United States District Court
For the Northern District of California

Civil Action No. 51909 AJZ

Dorothy Bryant, et al.,
Plaintiffs,

v.

Robert B. Carleson, etc.,
Defendant.

ORDER APPROVING DEFENDANT'S COMPLIANCE PROGRAM; ORDER DENYING RETROACTIVE RELIEF; SATISFACTION OF PARTIAL SUMMARY JUDGMENT, AS AMENDED

This matter came on to be heard on July 29, 1971 at 1:30 p.m. before the Honorable Alfonso J. Zirpoli for determination as to whether the State of California is now in compliance under the First and Second Causes of Action with section 402(a)(23) of the Social Security Act, 42 U.S.C. 602(a)(23). The State of California's program having been considered by the court in accordance with the instructions of the Court of Appeal, the court finds the State in full compliance with the requirements of Section 402(a)(23) of the Social Security Act and the court finds:

1. That January 1, 1962 was the last date maximum grants were established for purposes of said section 402 (a)(23).

2. The 21.4 percentage of living costs increase since January 1, 1962 as determined by the State is correct.

3. The State's program was put into effect June 1, 1971, and

4. The standard of need has been properly adjusted.

Now Therefore, It Is Ordered that the State of California is in compliance with section 402(a)(23) of the Social Security Act and the Partial Summary Judgment entered as to the First and Second Causes of Action on September 11, 1970 as amended on November 17, 1970, December 18, 1970, and February 26, 1971 has been satisfied, and

It Is Further Ordered that plaintiffs' request that defendant be required to make payments in accordance with section 402(a)(23) retroactive to July 1, 1969, the effective date of said Section, is denied.

Dated: Aug. 10, 1971

Alfonso J. Zirpoli
Alfonso J. Zirpoli
United States District Judge